



**INSTRUMENT OF INCORPORATION OF THE RULES
FOR REFERENCE OF UNRESOLVED DISPUTES TO
THE ASEAN SUMMIT TO THE PROTOCOL TO THE
ASEAN CHARTER ON DISPUTE SETTLEMENT
MECHANISMS**

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (ASEAN), hereinafter collectively referred to as "Member States" or individually as "Member State";

RECALLING that the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms was signed on 8 April 2010, hereinafter referred to as "the Protocol";

BEARING IN MIND that the Protocol has not entered into force;

RECALLING ALSO that the Rules for Reference of Unresolved Disputes to the ASEAN Summit was adopted by the ASEAN Foreign Ministers on 27 October 2010 in Ha Noi;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

The Annex of this Instrument, which is titled "**Rules for Reference of Unresolved Disputes to the ASEAN Summit**", shall be incorporated as Annex 5 to the Protocol and constitute an annex under Article 20 thereof

ARTICLE 2

1. This Instrument shall enter into force upon signature.
2. Annex 5 to the Protocol shall apply to any reference of unresolved disputes to the ASEAN Summit only upon the entry into force of the Protocol.
3. The instrument of ratification of the Protocol by any Member State shall also represent its consent to be bound by Annex 5 to the Protocol.
4. This Instrument shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the Instrument of Incorporation of the Rules for Reference of Unresolved Disputes to the ASEAN Summit to the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.

DONE at Ha Noi, Viet Nam, on the Twenty-Seventh Day of October in the Year Two Thousand and Ten, in a single copy in the English language.

Annex 5

RULES FOR REFERENCE OF UNRESOLVED DISPUTES TO THE ASEAN SUMMIT

These Rules have been made pursuant to the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms signed on 8 April 2010 in Ha Noi ("the Protocol") and are annexed to the Protocol.

Rule 1

An unresolved dispute under the Protocol shall be referred to the ASEAN Summit in the manner set out in the rules below.

Rule 2

A Party to the dispute may notify the ASEAN Coordinating Council of an unresolved dispute where:

1. the Parties to the dispute fail to carry out the direction of the ASEAN Coordinating Council as set out in Article 9 of the Protocol within 150 days in the case of arbitration, and 45 days in the case of good offices, mediation or conciliation, from the date of receipt of notification from the ASEAN Coordinating Council, or any extended timeline agreed to by the Parties;
2. the Parties to the dispute have carried out the direction of the ASEAN Coordinating Council but the dispute remains unresolved; or
3. the ASEAN Coordinating Council is unable to reach a decision on how the dispute is to be resolved pursuant to Paragraph 4 of Article 9 of this Protocol; or
4. the Parties to the dispute mutually decide that they are unable to resolve the dispute through the application of dispute settlement mechanisms as provided for under this Protocol which they have mutually agreed upon.

Rule 3

1. Upon receipt of a notification of an unresolved dispute pursuant to Rule 2, the ASEAN Coordinating Council shall inform all other Parties to the dispute of such notification.
2. Before an unresolved dispute as mentioned in Rule 2 is referred to the ASEAN Summit, the ASEAN Coordinating Council, within 45 days, may consider suggesting, recommending or providing assistance, as appropriate, to the Parties to the dispute to resolve the dispute through some other dispute settlement mechanisms provided for under this Protocol.
3. Where the ASEAN Coordinating Council makes any suggestion or recommendation or provides assistance to the Parties to the dispute pursuant to

Paragraph 2 of this Rule, the Parties to the dispute may agree to resolve their dispute through some other dispute settlement mechanism. In such a case, the Parties to the dispute shall inform the ASEAN Coordinating Council of the agreement and the outcome of the dispute settlement mechanism utilised by them.

Rule 4

1. The ASEAN Coordinating Council shall refer the unresolved dispute to the ASEAN Summit within 90 days of the receipt of the notification pursuant to Rule 2 or any timeframe as deemed appropriate by the ASEAN Coordinating Council after the application of Paragraph 2 of Rule 3 or Paragraph 3 of Rule 3.

2. The reference to the ASEAN Summit pursuant to Paragraph 1 of this Rule, shall be accompanied by a report of the ASEAN Coordinating Council to the ASEAN Summit in order to facilitate the resolution of the dispute, and memoranda or submissions prepared by the respective Parties to the dispute at initial process of dispute settlement, if any.

3. The report of the ASEAN Coordinating Council to the ASEAN Summit shall contain the following information:

- (a) a summary of the dispute;
- (b) actions taken by the Parties to the dispute to resolve the dispute;
- (c) actions taken by the ASEAN Coordinating Council to resolve the dispute, including any action pursuant to Paragraph 2 of Rule 3;
- (d) any recommendations which the ASEAN Coordinating Council may wish to make to the ASEAN Summit on how the dispute may be resolved (which may include a recommendation that the dispute be referred to a panel of experts to advise the ASEAN Summit on the resolution of the dispute).

Rule 5

1. The Party to the dispute which has notified the ASEAN Coordinating Council of an unresolved dispute pursuant to Rule 2 above may, at any time when said Party considers that the dispute is no longer unresolved, withdraw its notification to the ASEAN Coordinating Council.

2. The Parties to the dispute may, at any time, inform the ASEAN Coordinating Council that they wish to jointly withdraw the reference of their unresolved dispute to the ASEAN Summit, with expressed explanation of such withdrawal which may specify that the dispute is no longer unresolved or that the dispute will be resolved in some other way.
